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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

MICHAEL ARATA, Petitioner and Appellant, v. DEBORAH COOPER et al., Respondents; CONTRA COSTA COUNTY TRANSPORTATION AUTHORITY et al., Real Parties in Interest.	A159487 (Contra Costa County Super. Ct. No. MSN192489)

Michael Arata appeals from the denial of his petition for a writ of mandate challenging a Contra Costa County (County) ballot measure that was to impose a local sales tax for transportation improvements. The measure was defeated in the statewide primary election held March 3, 2020, while this appeal was pending. The appeal is therefore moot. It presents no questions that warrant an exception to the general rule that appellate courts will not review cases in which no effective relief can be granted, so we dismiss it.

BACKGROUND

On November 19, 2019, the County Board of Supervisors adopted an ordinance calling a special election on a measure authorizing a new half-cent sales tax to fund transportation. The special election was to be consolidated with the statewide primary election on March 3, 2020.

On December 12, 2019, the County Elections Division randomly assigned the letter J to the sales tax measure. The ballot measure question for Measure J appeared on the official ballot and in the voter information guide. County Counsel prepared an impartial analysis of the measure, which was also printed in the voter information guide.

On December 30, 2019, Arata filed a petition for writ of mandate naming County Counsel and the County Clerk and Registrar of Voters as respondents and the County's Transportation Authority and Board of Supervisors as real parties in interest.[1] The petition sought to compel the County to (1) assign the measure a letter other than J; (2) replace the cent symbol in the ballot question with a percent symbol; and (3) make various changes to the ballot title and label and County Counsel's analysis. The petition sought declaratory and injunctive relief.

On January 6, 2020, the trial court denied the petition. The court found the petition was not timely filed, that granting it

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[1] For convenience, we will refer to respondents and real parties in interest jointly as the County unless the context requires specificity.

would unreasonably interfere with the election process, and that Arata's arguments were unconvincing on the merits.

Arata filed an ex parte application for an order shortening time to hear a motion for reconsideration, which was denied on January 9. On January 29, Arata withdrew his motion for reconsideration, withdrew his remaining causes of action for declaratory and injunctive relief, and filed this appeal. Almost three weeks later, on February 18, 2020, Arata moved this court to expedite the appeal, shorten time, and for calendar preference. Measure J was defeated at the election held on March 3, 2020. We denied the motion to dismiss on March 9 after the County opposed calendar preference and moved to dismiss Arata's appeal as moot the day after the election.[2] We deferred consideration of the motion until consideration of the merits of the appeal.

DISCUSSION

Arata makes numerous procedural and substantive arguments challenging the trial court's denial of his writ petition. We will not address them because (1) they were rendered moot by the March 3, 2020 election, and (2) the case presents no issues of significant public interest that warrant appellate resolution despite their technical mootness.

An appeal should be dismissed as moot when an event occurs during pendency of the appeal that renders it impossible for the appellate court to grant appellant any effectual relief. (*Eye Dog Foundation v. State Board of Guide Dogs for the*

[2] We granted the County's request for judicial notice of the official election results.

Blind (1967) 67 Cal.2d 536, 541.) " 'If events have made such relief impracticable, the controversy has become "overripe" and is therefore moot.' [Citation.] By the same token, an appeal is moot if ' "the occurrence of events renders it impossible for the appellate court to grant appellant any effective relief." ' " (*Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 174-175.) That is the case here. "An appellant may not, 'after the election has been held, still urge a court to stop it.' " (*Long v. Hultberg* (1972) 27 Cal.App.3d 606, 608-609; *Lenahan v. City of Los Angeles* (1939) 14 Cal.2d 128; *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10-11.)

Arata implicitly concedes that Measure J's defeat at the ballot box rendered his appeal moot, but argues we should nonetheless exercise our discretion to decide the appeal because it presents issues of significant public interest that are likely to recur but evade timely review. This exception to the general rule against considering moot cases is not applicable. Arata offers no basis for his speculation that the County will likely issue "untrue, partial, false and/or misleading" analyses for ballot measures or otherwise administer elections inconsistently with the statutory requirements for ballot measures in the future.

Nor is it evident that such issues, should Arata or other litigants raise them in relation to future ballot measures, are likely to evade pre-election review. In this case, as the trial court observed, Arata "waited until the end of December on something [he] knew about since October" before seeking relief in the superior court. Asked by the trial court why his petition could

not have been filed in a timely manner under Elections Code section 9190, Arata's counsel responded, "Well, your honor, everything that goes on with people's lives and trying to arrange everything around the holidays and everything else, and quite frankly people do not like to litigate these matters."

Moreover, Arata also could have filed an emergency petition for writ of mandate with this court immediately after the trial court ruled on January 6, 2020. He did not. Instead he waited more than three weeks, until January 29, to file a notice of appeal on normal time. Almost three more weeks passed before he moved in this court (unsuccessfully, as it turned out) to expedite the appeal and shorten time. This latter period of delay he attributes to unexpected family obligations that "took precedence over pursuit of an immediate appeal."

We have no reason to believe litigants bringing challenges to future ballot measures will not move more expeditiously in the trial court or in seeking appellate review. Under these circumstances, we see no reason to add our voice to a debate in which we can offer no meaningful relief in the case before us. We therefore grant the County's motion to dismiss the appeal. Arata's February 18, 2020 and July 28, 2020 requests for judicial notice of various documents offered in support of his challenges to the measure are denied as unnecessary to the resolution of this appeal.

As a final matter, we note that Arata has requested oral argument. A party's right to oral argument exists in any appeal considered *on the merits* and decided by written opinion. (See *Moles v.*

Regents of University of California (1982) 32 Cal.3d 867, 871; accord, *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1254.) Because we are dismissing this appeal without reaching the merits, Arata does not have a right to oral argument, and we consider it unnecessary to our procedural ruling.

DISPOSITION

The appeal is dismissed.

Siggins, P.J.

WE CONCUR:

Petrou, J.

Jackson, J.